

Message Text

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ORIGIN L-03

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FM SECSTATE WASHDC
TO AMEMBASSY PANAMA

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E.O. 11652:N/A

TAGS: EINV, BDIS, PN

SUBJECT: BOSTON PANAMA CASE

REFS: (A) STATE 74566, (B) PANAMA 3457, (C) STATE 134026,

(D) JORDEN/HANSELL TELCON, 5/26/78

1. IN VIEW OF CLARIFICATIONS PROVIDED IN REF D, AND IN
LIGHT OF FACT THAT MOLINO WILL BE PROVIDING PRIMARILY RE-
SEARCH SERVICES, OUR EARLIER CONCERNS HAVE BEEN FULLY RE-
SOLVED, AND DEPARTMENT CONCURS IN THE SELECTION OF MOLINO
TO HELP US ANSWER THE THREE BASIC QUESTIONS LAID DOWN IN
REFTEL (A). IT IS IMPORTANT TO EMPHASIZE AT THIS TIME THAT
WE ARE NOT SEEKING RECOMMENDATIONS ON THE ULTIMATE QUEST-
IONS TO BE DECIDED UNDER INTERNATIONAL LAW. WE DO NOT WANT
MOLINO TO SUGGEST ANSWERS TO THE THREE ULTIMATE QUESTIONS
WE HAVE POSED: WAS THE LAND TAX DISCRIMINATORY, DID THE
COMPANY SUFFER A DENIAL OF JUSTICE OR AN EXPROPRIATION, HAS
THE COMPANY EXHAUSTED AVAILABLE LOCAL REMEDIES? WE ARE
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ASKING RATHER FOR ASSISTANCE IN THE COLLECTION OF RELEVANT
FACTUAL INFORMATION AND THE INTERPRETATION OF PANAMANIAN
LAW AND PROCEDURE--WHICH WILL ENABLE US TO DECIDE THE CASE
UNDER INTERNATIONAL LAW.

2. WITH REGARD TO THE UNCULTIVATED LAND TAX (PARA. 2, REF-
TEL A), WE WOULD BE INTERESTED IN ALL THE HISTORICAL DATA

ABOUT ITS IMPLEMENTATION WHICH MOLINO CAN FIND. THE SECONDARY QUESTIONS WE HAVE POSED IN THAT PARAGRAPH SHOULD GIVE HIM A GOOD IDEA OF THE KIND OF INFORMATION WE ARE SEEKING.

3. ON THE EXECUTION OF THE TAX LIEN IN 1969, WE NEED EXPERT ADVICE AS TO ITS PROCEDURAL ASPECTS. WHAT PROCEDURES SHOULD THE MINISTRY OF FINANCE AND TREASURY NORMALLY HAVE FOLLOWED IN CASES OF THIS NATURE AND DID IT FOLLOW THOSE PROCEDURES IN THIS CASE? IF NOT, IN WHAT WAYS DID THE MINISTRY DEVIATE FROM NORMAL PROCEDURES AND TO WHAT EXTENT COULD SUCH DEVIATION HAVE AFFECTED THE OUTCOME OF THE CASE. WERE ANY DEVIATIONS INCONSISTENT WITH PANAMANIAN LAW, OR WERE THEY LEGALLY ACCEPTABLE ALTERNATIVES TO NORMAL ADMINISTRATIVE PROCEDURES?

WHAT LEGAL MEANS WERE AVAILABLE FOR CORRECTING ANY PROCEDURAL ERRORS WHICH MAY HAVE BEEN MADE?

4. FINALLY, WITH REGARD TO LOCAL REMEDIES, WE WOULD LIKE TO KNOW NOT ONLY HOW THE COMPANY COULD HAVE CHALLENGED PROCEDURAL ERRORS, AS MENTIONED ABOVE, BUT ALSO WHAT AVENUES IT COULD HAVE FOLLOWED TO HAVE PREVENTED OR CHALLENGED THE EXECUTION OF THE TAX LIEN. OBVIOUSLY, IT COULD HAVE PAID THE TAXES ALLEGEDLY OWING, BUT WHAT ELSE

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COULD IT HAVE DONE? COULD IT HAVE APPEALED THE MINISTRY DECISION LOWERING THE UNCULTIVATED LAND TAX TO ROUGHLY \$260,000 BUT NOT RESCINDING IT ENTIRELY? BASICALLY, WHAT ALTERNATIVE ADMINISTRATIVE AND JUDICIAL REMEDIES WERE AVAILABLE TO THE COMPANY BOTH BEFORE AND AFTER THE EXECUTION OF THE TAX LIEN? IS THERE ANY AVENUE OF APPEAL OPEN TO THE COMPANY TODAY?

5. DEPARTMENT IS ANXIOUS TO MAKE SURE MOLINO HAS ALL THE DOCUMENTATION HE NEEDS FROM US TO CARRY OUT HIS STUDY. WE WOULD LIKE TO KNOW WHAT DOCUMENTS THE EMBASSY HAS MADE AVAILABLE TO HIM AND WHAT FURTHER INFORMATION, IF ANY, HE HAS REQUESTED OF US. OF COURSE, HE WILL NEED COPIES OF ALL THE PERTINENT JUDICIAL AND ADMINISTRATIVE DECISIONS IN THIS CASE AND THE BRIEFS AND APPEALS FILED ON THE COMPANY'S BEHALF; COPIES ARE BEING POUCHEO. IF MOLINO SHOULD DESIRE ANY ADDITIONAL INFORMATION OR CLARIFICATION FROM THE DEPARTMENT, EMBASSY SHOULD SUGGEST THAT HE CONTACT L DIRECTLY. FAY ARMSTRONG (L/ARA) HAS BEEN FOLLOWING THIS CASE AND WOULD BE HAPPY TO DISCUSS ANY OF ITS DETAILS WITH HIM.

TIME CONTINUES TO BE OF THE ESSENCE IN THIS CASE AND
DEPARTMENT WOULD ASK THAT MOLINO MAKE EVERY EFFORT TO
GATHER THE REQUESTED INFORMATION AS QUICKLY AS POSSIBLE--
HOPEFULLY WITHIN TWO TO THREE WEEKS. VANCE

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